

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the)	DA 02-2381
Pay Telephone Reclassification)	RM No. 10568
and Compensation Provisions of)	
The Telecommunications Act of 1996)	

**WORLDCOM, INC.
REPLY COMMENTS ON APCC AND RBOC
COALITION PETITIONS FOR RULEMAKING**

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November 14, 2002

I. INTRODUCTION

WorldCom Inc. (“WorldCom”) takes this opportunity to respond to comments filed in the above-captioned proceeding.¹ Eight parties filed comments opposing the petitions for a rulemaking proposed by the RBOC Payphone Coalition (“RPC”) and the American Public Communications Council (“APCC”), (“Petitioners”).² Commenting parties have provided substantial evidence that Petitioners fail to meet the burden of proof needed for the Commission to open a rulemaking to consider altering the default compensation rate and that an increase in the default compensation rate would be irrational and counterproductive in the current market for transient communications. Commenting parties agree that the Commission should reject Petitioners’ request to open a rulemaking to consider altering the default compensation rate, and should instead open a Notice of Inquiry to become better informed about conditions likely to exist in the market for transient communications in the near future.

II. PAYPHONE SERVICE PROVIDERS HAVE NOT MET THE BURDEN OF PROOF TO OPEN A PROCEEDING TO CONSIDER ALTERING THE DEFAULT COMPENSATION RATE

All parties oppose petitions by RPC and APCC to open a Notice of Proposed Rulemaking (“NPRM”) as unnecessary, or at a minimum, premature, inasmuch as Petitioners have failed to show that the public has been denied the ability to make calls while in transit, even in the face of

¹ Request That The Commission Issue A Notice Of Proposed Rulemaking Or In The Alternative, Petition For Rulemaking, APCC, August 29, 2002; Petition For Rulemaking, RPC, September 4, 2002.

² WorldCom, Inc (“WorldCom”), AT&T Corp (“AT&T”), Sprint Corporation (Sprint”), IDT Corporation (“IDT”), Global Crossing North America, Inc. (“Global Crossing”), ATX Communications, Inc., Business Telecom, Inc., US LEC Corp. (“ATX”), Telstar International, Inc. (“Telstar”), and the Attorney General of the State of Texas (“Texas AG”).

declining numbers of payphones.³ Commenting parties agree that the public's need for payphones has dramatically declined since the passage of the Telecommunications Act of 1996, and that Petitioners have failed to meet the burden of proof necessary for a rulemaking.⁴ WorldCom agrees with the other commenting parties that Petitioners have failed to properly consider the full impact of technological advances and the expected resultant market changes on the existing compensation regime as required by the Commission.⁵ Petitioners focus exclusively on the impact wireless communications has had on payphone usage, but fail to consider its coterminous impact on the public's need for payphones. Their petitions are premised on the assumption that the Commission should maintain the number of payphones currently in existence.

III. PAYPHONE SERVICE PROVIDERS PETITIONS ARE DEEPLY FLAWED

A. Failure to consider the number of payphones needed in current market conditions invalidates Petitioners' call volume estimates

This failure to consider the number of payphones needed in today's market invalidates every aspect of Petitioners' filings. It invalidates their estimates of monthly call volumes at marginal locations because they fail to exclude unprofitable phones from their sample,⁶ and fail to control for self-selection bias, which undoubtedly results in an over-representation of

³ WorldCom at 4, AT&T at 7, Sprint at 9, IDT at 5-9, ATX at 3, Telstar at 3.

⁴ WorldCom at 2, AT&T at 7, Telstar at 3, ATX at 3, IDT at 3, Sprint at 3.

⁵ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Third Report and Order ("Third Payphone Order"), Released February 3, 1999, • 18.

⁶ AT&T at 12.

unprofitable locations.⁷ Indeed, given the magnitude of average unprofitability presented by petitioners, it would not be surprising if not a single payphone in their samples was found to be profitable. On a strict definition of “marginal payphone” therefore, one must conclude that the phones in the Petitioners’ samples are sub-marginal and should be removed from Petitioners’ samples.⁸

WorldCom recognizes that the dial around compensation rate partly determines whether a phone is “just profitable” and therefore marginal.⁹ But if the public’s need for payphones has dramatically declined as a result of greatly increased wireless substitution, the resulting increase in the price elasticity of demand will severely undermine the ability of rate increases to transform currently sub-marginal phones into marginal ones.¹⁰ The Commission appears to have come to this conclusion by rejecting the use of rate increases to maintain the numbers of payphones in the face of competition from wireless providers. Instead, the Commission expressed the belief that competition from wireless services providers should proceed, and state commissions should monitor whether competitive market forces caused the removal of payphones from locations where they continue to be needed.¹¹

⁷ ATX at 10, Texas AG at 3, AT&T at 13.

⁸ “It is axiomatic that at a marginal payphone location, the payphone earns just enough revenue to warrant its placement.” *Id.*, at •156.

⁹ RPC at 4.

¹⁰ WorldCom at 3, AT&T at 6, Telstar at 2, Texas AT at 3, ATX at 2, IDT at 5, Sprint at 2, Global Crossing at 5.

¹¹ Third Payphone Order at 141, fn. 282; WorldCom Comments at 8.

Commenting parties urge the Commission to maintain this approach. By allowing the decline in payphones to continue, volumes on remaining payphones will increase, as will profitability.¹² Commenting parties are not aware of any state commissions who have found that the decline in payphones to date, coupled with existing public interest payphone programs where they exist, has denied the public the ability to make calls from payphones.¹³ The public's need for payphones may be reduced further as even more affordable wireless services become available.¹⁴ Because of the possibility that substantial additional reductions in the volume of payphones may be required in the near future, commenting parties recommend the Commission issue a notice of inquiry (NOI) into the number of payphones that will be needed in the near future, the extent to which payphones might be removed from locations without other payphones nearby, to the extent to which existing public interest payphone programs would be capable of maintaining payphones in unprofitable locations where they serve a public need, and other relevant questions.¹⁵

B. Failure to consider the number of payphones needed in current market conditions invalidates Petitioners' cost estimates

The failure to fully consider the impact of wireless services also invalidates Petitioners' cost estimates. Petitioners' cost estimates presume that all historic assets should be fully reimbursed. However, the removal of payphones from service has resulted in a large inventory

¹² WorldCom at 5, Texas AG at 3, Sprint at 4, AT&T at 11.

¹³ WorldCom at 4, ATX at 4, AT&T at 8, Telstar at 4, IDT at 7.

¹⁴ WorldCom at 10.

¹⁵ WorldCom at 2, ATX at 5,6, AT&T at 8, Sprint at 5, Telstar at 3-6, IDT at 4..

of the full range of payphone assets becoming available at discounted rates on the second-hand market. A new entrant may also sub-contract installation and overhead functions for much less than the embedded costs associated with established PSPs.¹⁶

C. Payphone Service Providers Petitions Ignore Revenue Opportunities

Petitioners exclusive focus on the impact of wireless service on the level of payphone utilization also fails to consider the ability of PSPs to respond to this competitive threat. Their petitions fail to take any responsibility for their own actions which may have contributed to the decline in utilization, and their petitions fail to identify any additional revenue sources they might seek in order to maintain their profitability. Careful and creative placement decisions, improved quality of basic service, and the pursuit of non-basic revenues, hold the potential to substantially offset revenue losses from wireless services.¹⁷

IV. THE COMMISSION SHOULD CONSIDER ADOPTING A CALLER PAYS SYSTEM

Finally, WorldCom supports Sprint's request for the Commission to consider adopting a "caller pays" approach.¹⁸ In the First Payphone Order the Commission rejected the caller pays approach on the grounds that this method of recovering the costs imposed by non-presubscribed operator calls was prohibited by Section 226(e)(2). However, the compensation provisions of Section 276 supercedes those of Section 226, because it mandates payment for each and every payphone call, while Section 226 only requires the Commission to consider the need to compensate PSPs for calls routed to non-presubscribed operators. The Commission recently

¹⁶ WorldCom at , AT&T at 21.

¹⁷ WorldCom at 11, Sprint at 4, Telstar at 5, Texas AG at 2, IDT at 10.

¹⁸ Sprint at 5.

affirmed its view that the compensation provisions of Section 276 supercede those of Section 226.¹⁹ There is nothing in Section 276 or its legislative history to suggest that a caller pays system would be disapproved by Congress.

In its Third Payphone Order, the Commission recognized the efficiency benefits of a caller pays systems, but held a decision to reconsider it in abeyance until it monitored "...the advancement of call blocking technology and any accompanying marketplace developments..."²⁰ Now is the time to inquire into the costs of implementing targeted call blocking in the NOI proposed by commenting parties. The Commission should request parties to comment on whether the implementation of targeted call blocking technology or a caller pays system is the more efficient method of introducing market signals into price of a dial-around call. The Commission should also request parties to comment on the relative costs of implementing each system.

V. CONCLUSION

Commenting parties have provided substantial evidence not only that Petitioners fail to meet the burden of proof needed for the Commission to open a rulemaking to consider altering the default compensation rate, but also that an increase in the default compensation rate would be irrational and counterproductive in the current market for transient communications.

Commenting parties agree that the Commission should therefore reject Petitioners' request to open a rulemaking to consider altering the default compensation rate, and should instead open a Notice of Inquiry which would explore such issues as: whether the public has been denied the

¹⁹ Fifth Payphone Reconsideration at •66

²⁰ Third Payphone Order at •115.

ability to make calls from payphones; whether payphone use has declined as a result of poor quality of service; whether wireless substitution will continue at the same pace as occurred between 1998-2001; whether current market conditions have altered the rational level at which payphone deployment meets the public's need; whether current market conditions have rendered the existing compensation methodology inappropriate; and the extent to which additional revenue sources will help sustain the deployment of payphones.

Sincerely,

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Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on November 14, 2002

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Certificate of Service

I, Elizabeth Bryant, do hereby certify that copies of the foregoing Petition for Reconsideration of WorldCom Inc. were sent on this 14th day of November, 2002, via first-class mail, postage pre-paid, to the following:

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